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DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400-AD28

[Public Notice 8163]

Exchange Visitor Program -- Fees and Charges

AGENCY: U.S. Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The U.S. Department of State (Department) is proposing to revise regulations to increase the Application Fee for Sponsor Designation or Redesignation and the Administrative Fee for Exchange Visitor (J-1 Visa Holder) Benefits assessed for providing Exchange Visitor Program (EVP) services, in order to recoup the costs incurred by the Department's Bureau of Educational and Cultural Affairs associated with operating aspects of the Exchange Visitor Program.

DATES: The Department will accept comments from the public up to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by any of the following methods:

- Persons with access to the Internet will be able to view and comment on the rule and supporting documentation, including the supporting cost study, by going to the Regulations.gov Web site <http://www.regulations.gov/search/Regs/home.html#home>, and searching on docket ID DOS-2010-0214.
- Mail (paper, disk, or CD-ROM submissions): U.S. Department of State, Office of Designation, SA-5, Floor 5, 2200 C Street, N.W., Washington, D.C. 20522
- E-mail: JExchanges@state.gov. You must include the title and RIN (1400-AD28) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA-5, Floor 5, 2200 C Street, N.W., Washington, D.C. 20522, 202-632-2805, or email at JExchanges@state.gov.

Supplementary Information: Under the authority of Section 810 of the United States Information and Educational Exchange Act of 1948, as amended, 22 U.S.C. 1475e, and the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, and following the guidelines set forth in Office of Management and Budget (OMB) Circular No. A-25, fees for the Exchange Visitor Program (EVP) Services were adopted for the first time in 2000. The Department issued regulations to establish sufficient fees to recover the cost of administrative

processing of requests for program designation or redesignation, and certain services for exchange visitor status changes. OMB Circular No. A-25 directs the Agency review of fees and services every two years.

The two fees for the Exchange Visitor Program under review are those set forth in 22 CFR Section 62.17(b)(1) and (2): the Application Fee for Sponsor Designation or Redesignation and the Administrative Fee for Exchange Visitor (J-1 Visa Holder) Benefits. The Exchange Visitor Program (EVP) provides foreign nationals, utilizing the J-1 Exchange Visitor Visa (J-1 Visa), opportunities to participate in exchange programs in the United States. It is administered and overseen by the Office of Private Sector Exchange in the Bureau of Educational and Cultural Affairs (ECA/EC). ECA/EC is responsible for designating eligible U.S. government agencies and public and private organizations as EVP sponsors. Upon designation, ECA/EC is also responsible for the oversight of the EVP sponsors. ECA/EC is comprised of a Front Office and three supporting offices: the Office of Private Sector Designation, the Office of Exchange Coordination and Compliance, the Office of Private Sector Exchange Program Administration. Three different funding streams fund all of the ECA/EC units administering and overseeing the EVP, including all of the EVP's program administration activities and the ECA/EC personnel conducting those activities. These funding streams are:

- Application Fee for Sponsor Designation or Redesignation and the Administrative Fee for Exchange Visitor (J-1 Visa Holder) Benefits: The Application Fee is paid by prospective and current EVP sponsors for Designation and Redesignation, respectively. The Administrative Fee is paid by EVP sponsors on behalf of J-1 participants seeking an administrative benefit such as reinstatement or other request related to their current exchange visitor program. Both fees primarily fund the Office of Private Sector Designation labor (salary) and ancillary costs (e.g., staff travel, communications, and utilities). Both fees also fund the Office of Exchange Coordination and Compliance ancillary costs and will fund the ancillary costs of the future Office of Private Sector Exchange Program Administration.
- SEVIS Fees paid by J-1 Visa Applicants and Participants to the U.S. Department of Homeland Security (DHS): These fees, via transfer on a reimbursable basis from DHS to the Department of State, fund the Office of Exchange Coordination and Compliance labor (salary) costs; and, in the future, will fund the Office of Private Sector Exchange Program Administration labor (salary) costs.
- Bureau of Educational and Cultural Affairs (ECA) Budget: Appropriated funds support certain ECA/EC personnel salaries (or portions of salaries)

and portions of salaries of Bureau of Education and Cultural Affairs Support Services personnel who assist the administration of the EVP.

This rulemaking only proposes changes to the Application Fee for Sponsor Designation or Redesignation, and the Administrative Fee for Exchange Visitor (J-1 Visa Holder) Benefits.

The current Application Fee for Sponsor Designation or Redesignation is \$2700 and the Administrative Fee for Exchange Visitor (J-1 Visa Holder) Benefits is currently \$233 per request. The Department proposes amendment of both fees to: \$3,982 (an increase of \$1,282) and \$367 (an increase of \$134), respectively. The proposed increase in the Application and Administrative Fees is primarily attributable to three initiatives related to ongoing or planned process improvements and technology implementations. These initiatives are expected to increase the efficiency and accuracy of the Designation and Redesignation Application review processes and the level of service provided to EVP sponsors by the Office of Private Sector Exchange. Costs assessments were developed by Deloitte Consulting LLP for each initiative and added into the total cost basis that must be recovered by the two EVP fees.

The three initiatives are:

- Development of a Learning Management System (an expansion of the currently existing Local Coordinator Training Certification Module) needed

to meet EVP local coordinator training requirements established in new or future EVP regulations.

- Development and implementation of the Designation Processing System, which consists of:
 - Robust electronic content management system for storing and reviewing new and historical sponsor files;
 - Electric file migration of all hard copy sponsor files; and
 - Complaint Management Workflow Module for tracking, managing, and reporting on all complaints and incidents reported to the Department (e.g., serious incidents reported by EVP sponsors and complaints reported by Exchange Visitors and any interested persons on behalf of Exchange Visitors or of a general nature).
- Addition of a new Office of Private Sector Exchange Program Administration in the Office of Private Sector Exchange (ECA/EC) and the addition of four Full-time Equivalent employees (FTEs) in the ECA/EC Front Office, which will increase the ancillary costs factored into the cost basis.

	Current	Proposed	Increase/Decrease
Designation/Redesignation	\$2,700	\$3,982	\$1,282

Individual Applications	\$233	\$367	\$134
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History of EVP Fees

The Department's Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange, designates the U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act), 22 U.S.C. 2451 et seq.; the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(J); the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277; as well as other statutory enactments, Reorganization Plans and Executive Orders. Under those authorities, over 1,400 sponsor organizations facilitate the entry of more than 300,000 exchange participants each year.

The Fulbright-Hays Act is the primary statutory authority for the Exchange Visitor Program. The purpose of the Act, set forth in Section 101, is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange." The Act authorizes the President to provide for such exchanges when he considers that it would strengthen international cooperative relations. The language of the Act and its legislative history make it clear that Congress considered international educational and cultural exchanges to

be a significant part of the public diplomacy efforts of the President in connection with his Constitutional prerogatives in conducting foreign affairs.

In 2006, the Department examined its current Exchange Visitor Program fee structure (which had been instituted by the former USIA, prior to its merger with the Department) for compliance with applicable laws and policies, and to determine the appropriate level of fees given the expansion of the offices providing services. This analysis was grounded on the guiding principle that fees should be fair and reflect the full cost to perform the service; and that services performed on behalf of distinct, identifiable beneficiaries (versus the public at large) should, to the extent possible, be self-sustaining. As a result of the review, it was determined that additional fee categories and increased fees were required, and the Department published a final rule on November 1, 2007 (72 FR 61800), which became effective December 3, 2007.

The 2007 fee rule identified the program re-designation process as a separate and identifiable service for which the cost of such service should be recouped. This fee (Application Fee) is collected from over 1,400 academic, governmental, and private sector sponsor organizations. This fee also includes the cost of services arising from a program sponsor's requests for amendments to programs, allotment requests, and updates of information, as well as the costs for program compliance, regulatory review and development, outreach, and general program administration.

Also established in the 2007 fee rule was the Administrative Fee paid by sponsors on behalf of J-1 foreign national exchange participants for services provided on an individual basis and for the sole benefit of the exchange participant (i.e., requests for exchange visitor status changes of program category, extension beyond maximum duration, requests for reinstatement, requests to update the Student and Exchange Visitor Information System (SEVIS) status, and similar requests). The fees received for these individual services also include an apportioned share of costs for regulatory review and development, outreach, and general program administration.

In 2009, per guidelines set forth in OMB Circular A-25, the Department conducted a biennial review of fees established in 2007. In accordance with the Statement of Federal Finance and Accounting Standards No. 4 (SFFAS 4), the Department used an “activity-based costing” (ABC) approach to develop a sustainable model to align the costs of the program to the specific services performed by Office of Private Sector Exchange’s Office of Designation on behalf of program sponsors and other program stakeholders. ABC is a method of identifying the work that is performed, how resources are consumed by that work, and how that work contributes to the production of required outputs. The ABC methodology enabled the development of a bottom-up budget that factored in forecasts for expected demand of program services in the years when the fees are

effective and would provide the program with adequate resources to meet that future program demand. Based on this review, the Department established a user application fee of \$2,700 for designation or redesignation, and a fee of \$233 to be paid by program sponsors on behalf of J-1 foreign national exchange participants requesting individual program services. The Department published a final rule on February 25, 2011 (76 FR 10498), which became effective March 28, 2011.

In 2011, Deloitte Consulting LLP (hereafter referred to as Deloitte) began its fee study as part of the biennial review of the fees charged by the Department, consistent with the guidelines set forth in OMB Circular A-25. In accordance with SFFAS 4, Deloitte used an ABC approach to align the costs of the program to the administration of the Exchange Visitor Program and the associated administrative activities. The methodology and the results of this study are examined in the following sections.

Results of Fiscal Year (FY) 2012 Fee Study

Methodology

In accordance with the *Statement of Federal Finance and Accounting Standards No. 4 (SFFAS 4)*, Deloitte used an “activity-based costing” (ABC) approach to develop a sustainable model to align the associated costs of the EVP to the specific services performed by the Office of Private Sector Designation on behalf of EVP applicants, sponsors, participants and other program stakeholders. ABC is a

method of identifying the work that is performed, how resources are consumed by that work, and how that work contributes to the production of required outputs.

This methodology enabled the development of a cost model that factored in forecasts for expected demand of program services in the years when the fees are effective (FY2013 and FY2014) and would provide the program with adequate resources to meet that future program demand.

According to legislative and regulatory guidance, user charges should be based on the full cost to the government of providing the services or things of value.

OMB Circular A-25 defines full cost as all direct and indirect costs to any part of the Federal government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement.
- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment.
- Management and supervisory costs.
- Costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

The generally accepted government accounting practices for managerial cost accounting, published in *Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4*, provide the standards for cost definition, recognition, accumulation and assignment as they relate to the recognition of full cost. These standards have been applied to the determination of what costs to include in or exclude from the Exchange Visitor Program fees.

To obtain data needed for the cost model using the ABC methodology, a Labor Survey was conducted to determine the time spent by the Office of Private Sector Designation personnel on EVP activities. The survey results were taken into account when determining the two fees.

The results of the Labor Survey were analyzed in conjunction with Office of Private Sector Designation salary data (escalated for benefits) to determine the cost basis of activities supporting the EVP. Added to the cost basis were Office of Private Sector Exchange ancillary costs (including the projected ancillary costs of a planned, new third office and four additional FTEs in the ECA/EC Front Office), costs for the development of a new Designation Processing System and a new Learning Management System, and Bureau of Educational and Cultural Affairs and Department of State labor (salary) costs that support the EVP.

The model then assigned direct costs and allocated indirect and General and Administrative (G&A) costs using allocation ratios to isolate direct, indirect, and G&A costs. The sum of direct, indirect and G&A costs for Designation and Redesignation Applications were divided by the projected number of FY 2013 and FY 2014 Designation and Redesignation Applications to determine the Application Fee for Sponsor Designation or Redesignation. To determine the Administrative Fee for Exchange Visitor (J-1 Visa Holder) Benefits, the sum of direct, indirect and G&A costs for Exchange Visitor Activity Counts were divided by the projected number of FY 2013 and FY 2014 Exchange Visitor Activity Counts; i.e., the expected number of benefit applications.

The following section describes the cost model structure driving the proposed fee changes.

Cost Model Structure

Model Overview

In summary, the *EVP Cost Accounting Model* takes cost data from the *GS Schedule Rates*, *Baseline ECA Budget*, *Civilian Pay Cost Data*, *Activity Model Cost Pools*, *FTE Capacity Calculation*, *LCC Cost Assessment*, *DPS Cost Assessment*, and *Other Cost Pools* modules, assigns direct costs or allocates indirect and General and Administrative (G&A) costs using allocation ratios, and

then uses the direct, indirect, and G&A cost pools to calculate the two fees for the Fiscal Year (FY) 2013-2014 time frame.

The Cost Accounting Model contains twelve modules described in detail in the following sections. Most modules include an FY 2013 section and an FY 2014 section, given the need to enter separate data for each fiscal year. The modules that only have one tab are *Home*, *GS Schedule Rates*, *ECA Baseline Budget*, *FTE Capacity Calculation*, *LCC Cost Assessment*, *Designation Processing System*, *SEVIS & FTE Data*, and *Final EVP Fees FY 2013-2014*. The modules are sequenced to follow the general flow of calculations performed by the model.

GS Schedule Rates

The *GS Schedule Rates* module contains the General Schedule (GS) pay scale figures for FY 2012 – FY 2014. The figures for FY 2013 and FY 2014 are based on the 2012 General Schedule pay scale. These figures inform the *Civilian Pay Cost Data FY13 and FY14* and the *Activity Model Cost Pools FY2013 and FY2014* modules and are used to determine Department labor costs.

Baseline ECA Budget

The *Baseline ECA Budget* module contains the actual and projected Bureau of Education and Cultural Affairs (ECA) budget and budget breakdowns for FY 2012 – FY 2014. These estimates inform the *Other Cost Pools FY 2013 and FY 2014* modules.

This module also calculates the ancillary costs associated with Office of Exchange Coordination and Compliance, Office of Private Sector Exchange Program Administration, and ECA/EC Front Office personnel. The results of this calculation are documented in the *Other Cost Pools FY 2013 and FY 2014* tabs in the “Adjustment to Cost” column in the ECA/EC Non-Labor Cost Pool table.

Civilian Pay Cost Data FY 2013 & FY 2014

This module pulls Civilian Pay data by General Schedule (GS) Level for ECA/EC/D personnel from the *GS Schedule Rates* module. The salaries of the personnel are escalated for benefits according to OMB Circular A-76. This calculation is detailed further in the Cost Accounting Model Data Sources section.

Activity Model Cost Pools FY 2013 & FY 2014

This module displays the results of the Labor Survey that was conducted by the *2012 Deloitte Fee Study* to determine the time spent by ECA/EC/D personnel performing activities related to the administration of the Exchange Visitor Program. The results are displayed by personnel position in the form of percentages. This data is then multiplied by the escalated salary calculated in the *Civilian Pay Cost Data* module to create Activity Model Cost Pools to determine the costs associated with the time spent by ECA/EC/D personnel performing activities related to the administration of the Exchange Visitor Program. Finally,

this module includes a self-check feature to verify the completeness and accuracy of user entries.

FTE Capacity Calculation

This module displays the calculation the *2012 Deloitte Fee Study* performed in order to determine ECA/EC's current staffing needs related to fulfilling its mission of administering and overseeing the EVP.

Local Coordinator Certification (LCC) Trainings Cost Assessment

This module displays the costs of administering the training certifications for EVP sponsors' field staff (regional and/or local coordinators) through the development of an in-house Learning Management System (LMS). The module also contains the total expenditures paid to an external LMS vendor to administer the trainings while the LMS is in development. The results of these calculations are documented in the *Other Cost Pools FY 2013 & FY 2014* tabs in the ECA/EC Non-Labor Cost Pool tables.

Designation Processing System (DPS) Cost Assessment

This module displays the estimated costs of the Designation Processing System and Workflow Module designed to fully automate the designation and redesignation process in order to increase the Office of Private Sector Exchange's efficiency required for sponsor reviews and to eventually integrate with the SEVIS

II. The results of this cost estimate are documented in the ECA/EC Non-Labor Cost Pool tables of the *Other Cost Pools FY2013 & FY2014* modules.

Other Cost Pools FY 2013 & FY 2014

This module displays other costs associated with the Exchange Visitor Program, including the following:

- Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange (ECA/EC) non-labor costs including costs estimates of the Local Coordinator Training Certifications, Designation Processing System, and the value of the JASZ Technology Call Center Contract (provides call center services for the J-1 Visa Helpline).
- Bureau of Educational and Cultural Affairs (ECA) labor costs
- Department of State labor costs
- Department of State non-labor costs

Not all of the costs outlined above are allocated to the two fees since they support the Bureau of Educational and Cultural Affairs or the entire Department. The *2012 Deloitte Fee Study* allocated appropriate portions of these costs to the EVP by FTE ratios. The FTE ratios are calculated from data provided by *SEVIS & FTE Data* module.

SEVIS & FTE Data

There is only one tab for the *SEVIS & FTE Data* module. It displays historical SEVIS and FTE data. It includes projected CY 2013 and CY 2014 Designation and Redesignation Applications, and Exchange Visitor Activity Counts. Data in this module also generate FTE projections for FY 2013 and FY 2014. This module contains the following specific FTE data for the following organizational areas:

- Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange, Office of Private Sector Designation (ECA/EC/D) and Office of Exchange Coordination and Compliance (ECA/EC/ECC)
- Human Resources
- Support Services
- IIP Budget Office (Bureau of International Information Programs)
- ECA Budget Office
- Program Management Office
- Bureau of Educational and Cultural Affairs (ECA)
- Department of State

Cost Assignment & Allocation FY 2013 & FY 2014

This module pulls the data from the previous modules in order to assign direct costs or allocate indirect or G&A costs to each fee. The method in which costs are assigned or allocated varies by cost classification:

- Direct costs are costs that can be specifically identified with an output. For direct costs, Deloitte followed the Direct Cost Assignment method to assign all resource cost to one cost object. In this case, the full cost of activities is assigned to the fee for which it is determined to be a direct cost.
- Indirect costs are costs of resources that are jointly or commonly used to produce two or more outputs but are not specifically identifiable with any one output. For indirect costs, Deloitte followed the Prorated Cost Allocation method to allocate indirect costs to all cost objects based on percentage of total direct cost of the destination cost objects. In this case, the full cost in each indirect cost pool is split and each portion is then assigned to the appropriate fee. Indirect costs were split based on the labor survey allocations to each activity type (i.e., Application or Administrative).
- G&A costs are the costs of support services that an office or segment receives from other segments or entities. G&A costs calculated and apportioned in Other Cost Pools FY2013 and FY2014 are allocated to each of the fees in the same way indirect costs are allocated.

This method for allocating indirect and general and administrative (G&A) cost is fully consistent with cost allocation guidance found in Sections 133 and 134 of *Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4* as follows:

“133. Sometimes, it might not be economically feasible to directly trace or assign costs on a cause-and-effect basis. These may include general management and support costs, depreciation, rent, maintenance, security, and utilities associated with facilities that are commonly used by various segments.”

“134. These supporting costs can be allocated to segments and outputs on a prorated basis. The cost allocations may involve two steps. The first step allocates the costs of support services to segments, and the second step allocates those costs to the outputs of each segment. The cost allocations are usually based on a relevant common denominator such as the number of employees, square footage of office space, or the amount of direct costs incurred in segments.”

Fee Cost Pools FY 2013 & FY 2014

This module pulls data from the *Cost Assignment and Allocation* module and groups it into total direct, indirect, and G&A cost pools. It then divides each of those cost pool amounts by the total projected SEVIS activity units to determine each fee's direct, indirect, and G&A components. It also sums each of these cost components to provide the total for each fee for FY 2013 and FY 2014. Finally, this module includes a self-check feature to verify the completeness and accuracy of user entries.

Final EVP Fees FY 2013-2014

This module adds the total costs and SEVIS Activity Units for FY 2013 and FY2014 from the *Fee Cost Pool* module in order to provide fees that are based on a two-year fee lifecycle consistent with the guidelines set forth in OMB Circular A-25 requiring current Program Sponsors to apply for Redesignation status every two years. It also includes a self-check feature to verify the completeness and accuracy of user entries.

Cost Accounting Model Data Sources

GS Schedule Rates

The 2009, 2010, 2011, and 2012 General Schedule Pay Tables and the 2011 SES Pay Rates for the Washington-Baltimore-Northern Virginia Locality were obtained from the U.S. Office of Personnel Management.

Baseline ECA Budget

Bureau of Educational and Cultural Affairs (ECA) provided the actual Educational and Cultural Exchange Programs budgetary data for FY 2011, and projected budgetary data for FY 2012, FY 2013, and FY 2014.

Civilian Pay Cost Data

For the data in the *Civilian Pay Cost Data* module, ECA provided Deloitte with each ECA/EC/D employee's GS level, and then Deloitte used the Step 5 salary assumption for each level to determine the salary to be entered for each employee. This figure was then escalated by 36.25% to capture benefits. This percentage is

the guidance given for average benefits escalation in OMB Circular A-76 Performance of Commercial Activities, Attachment C--Calculating Public-Private Competition Costs.

Activity Model Cost Pools

The only data in the *Activity Model Cost Pools* module is the Labor Survey results. This input was accomplished by converting the hours each respondent recorded for their position and for each activity they performed during the Labor Survey into percentages of FTEs.

Local Coordinator Certification (LCC) Trainings Cost Assessment

ECA provided the expenditures to date spent on external Learning Management System (LMS) vendor. The cost estimate for the in-house LMS was based on Deloitte's own estimate using interviews, training system requirements, subject-matter experts, and industry standards.

Designation Processing System (DPS) Cost Assessment

The cost estimates for the development of the Designation Processing System, Electronic File Conversion, and Complaint Management Workflow Module were based on Deloitte's own estimate using interviews, ECA/EC system requirements, subject-matter experts, and industry standards.

Other Cost Pools

The data from Other Cost Pools is derived from *the GS Schedule Rates, Baseline ECA Budget, LCC Cost Assessment, DPS Cost Assessment, and SEVIS & FTE Data* modules.

- Deloitte used the following methods to derive ECA/EC non-labor cost data:
 - The FY2013 and FY2014 budgetary data has been taken from ECA projected data found in the *Baseline ECA Budget* module.
 - The Local Coordinator Certification Training Cost Assessment and the Designation Processing Cost Assessment are derived from the calculations in *LCC Cost Assessment* and *DPS Cost Assessment* modules, respectively.
 - JASZ Technology Call Center contract value was provided by ECA/EC.
- All ECA labor cost data is derived from the FY 2012 Employment Compensation and Benefits figure in the *ECA Budget* module. This figure is pro-rated by the respective ECA organizational area's FTEs, and based on the FY 2012 Employment Compensation and Benefits figure for FY 2013 and FY 2014 estimates.
- For Department non-labor costs, Deloitte obtained the Total Department-wide GSA Rents from the *Department of State Congressional Budget Justification--Fiscal Year 2012*.

SEVIS & FTE Data

ECA/EC provided Deloitte with historical SEVIS activity counts associated with each fee for calendar years (CY) 2007 - 2011. ECA/EC also provided Deloitte with actual Department, ECA, and ECA/EC FTE levels for FY 2009 through FY 2011 and projected levels for FY 2012. Using these figures, Deloitte projected for FY 2013 and FY 2014 SEVIS and FTE data in the following manner:

- For SEVIS data projections:
 - ECA/EC provided CY 2007 through CY 2011 data.
 - ECA/EC directed the use of constant CY 2011 counts for CY 2012 – CY 2014.
- For FTE data projections:
 - ECA/EC provided actual FY2009 through FY2011 data.
 - ECA/EC provided projected FY2012 data.
 - ECA/EC/D FY 2013 and FY 2014 data were projected at FY 2012 levels with the additional nine FTEs calculated from the FTE Capacity Calculation (Section 3.5) and four additional FTEs that joined ECA/EC/D after the Labor Survey was conducted.

Regulatory Findings

Administrative Procedure Act

The Department of State is of the opinion that the Exchange Visitor

Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from Sec 553 (Rulemaking) and Sec 554 (Adjudications) of the Administrative Procedure Act (APA). The U.S. Government supervises programs that invite foreign nationals to come to the United States to participate in exchange visitor programs, either directly or through private sector program sponsors or grantees. When problems occur, the U.S. Government often has been, and likely will be, held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems.

The purpose of this rule is to set the fees that will fund services provided by the Exchange Visitor Program Office of Designation to more than 1,400 sponsor organizations and 300,000 Exchange Visitor Program participants. These services include oversight and compliance with program requirements as well as the monitoring of programs to ensure the health, safety and well-being of foreign nationals entering the United States (many of these exchange programs and participants are often funded by the U.S. Government) under the aegis of the Exchange Visitor Program and in furtherance of its foreign relations mission. The Department of State represents that failure to protect the health and well-being of these foreign nationals and their appropriate placement with reputable

organizations will have direct and substantial adverse effects on the foreign affairs of the United States.

Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule as a proposed rule, with a 60-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function.

Regulatory Flexibility Act/Executive Order 13272: Small Business

As discussed above, the Department believes that this proposed rule is exempt from the provisions of 5 U.S.C. 553, and that no other law requires the Department to give notice of proposed rulemaking. Accordingly the Department believes that this proposed rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C.601, et seq.) or Executive Order 13272, Sec. 3 (b).

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175--Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the provisions of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801-808). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13563 and Executive Order 12866

As discussed above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has nevertheless reviewed this proposed regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

The Department has examined the economic benefits, costs, and transfers associated with this proposed rule, and declare that educational and cultural exchanges are both the cornerstone of U.S. public diplomacy and an integral component of American foreign policy. The benefits of these exchanges to the United States and its people are invaluable and cannot be monetized; in the same way, even one instance of an exchange visitor having a bad experience or, worse, being mistreated, could result in embarrassment and incalculable harm to the foreign policy of the United States. Therefore, the Department is of the opinion that these benefits of this rulemaking outweigh its costs.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The

regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405-0147, expiring on November 30, 2013.

List of Subjects in 22 CFR Part 62

Cultural Exchange Program.

Accordingly, 22 CFR part 62 is proposed to be amended as follows:

PART 62--EXCHANGE VISITOR PROGRAM

1. The authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431-1442, 2451 et seq.; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, Div. G, 112 Stat. 2681 et seq.; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104-208, Div. C, 110 Stat. 3009-546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107-56, Sec. 416,

115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 543.

2. Revise § 62.17 to read as follows:

§ 62.17 Fees and charges.

(a) Remittances. Fees prescribed within the framework of 31 U.S.C. 9701 must be submitted as directed by the Department and must be in the amount prescribed by law or regulation.

(b) Amounts of fees. The following fees are prescribed.

(1) For filing an application for program designation and/or redesignation (Form DS-3036)--\$3,982.00.

(2) For filing an application for exchange visitor status changes (i.e., extension beyond the maximum duration, change of category, reinstatement, reinstatement-update SEVIS status, ECFMG sponsorship authorization, and permission to issue) --\$367.00.

January 22, 2013

(Date)

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